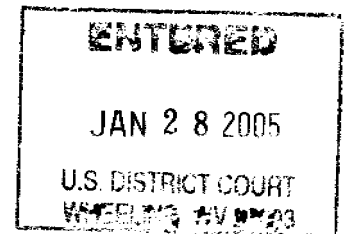


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWN L. SPEAR,

Plaintiff,



v.

Civil Action No. 5:04-CV-65

JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**REPORT AND RECOMMENDATION THAT ACTION BE DISMISSED FOR FAILURE
TO COMPLY WITH LOCAL RULES**

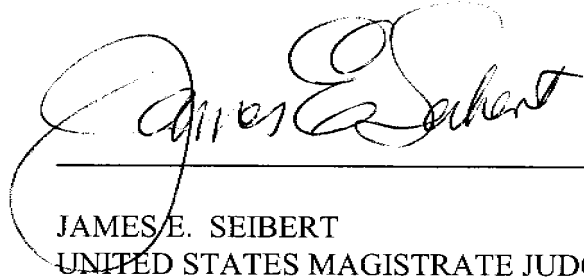
Commissioner filed an answer and transcript on September 1, 2004. L.R. Gen. P. 83.12 (b) requires Claimant to file a Brief in Support of his or her claim(s) for relief within thirty days of Commissioner's filing her answer and a complete copy of the administrative record. Claimant's brief was due on October 1, 2004. Claimant's brief is now more than three months late. Therefore, it is recommended this action be **DISMISSED**.

Any party who appears *pro se* and any counsel of record, as applicable, may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be filed with the District Court Judge of Record. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of

this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to parties who appear *pro se* and any counsel of record, as applicable.

DATED: January 27, 2005



JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE